IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN
BEFORE S/SHRI CHANDRA POOJARI, AM & GEORGE GEORGE K., JM

ITA Nos.23 & 24/Coch/2020
Assessment Years: 2013-14 & 2014-15

The Assistant Commissioner of Income Tax, Corporate Circle-1(2), Kochi	**Vs.**	Kannan Devan Hills Plantations Co. Pvt. Ltd., MGP/IX/2226/KDHP House, Munnar, Devikulam, Idukki-685 612. [PAN: AAACK 5399M]
(Revenue-Appellant)		**(Assessee-Respondent)**

ITA Nos.25 & 26/Coch/2020
Assessment Years: 2013-14 & 2014-15

Kannan Devan Hills Plantations Co. Pvt. Ltd., MGP/IX/2226/KDHP House, Munnar, Devikulam, Idukki-685 612. [PAN: AAACK 5399M]	**Vs.**	The Assistant Commissioner of Income Tax, Corporate Circle-1(2), Kochi
(Assessee -Appellant)		**(Revenue-Respondent)**

Revenue by	Shri Mritunjaya Sharma, Sr. DR
Assessee by	Ms. Rohini VenooThampy, CA

Date of hearing	10/03/2020
Date of pronouncement	12/03/2020

O R D E R

Per CHANDRA POOJARI, AM:

These two cross appeals are directed against the different orders of the CIT(A) and pertain to the assessment years 2013-14 and 2014-15 .

2. Since the issues involved in these appeals are common, they were heard together and are being disposed of by this common order.

ITA No.23/Coch/2020:Revenue's Appeal:A.Y. 2012-13
ITA No.24/Coch/2020:Revenue's Appeal:A.Y. 2014-15

3. First we shall take up the Revenue's appeals in ITA Nos.23&24/Coch/2020 for the assessment years 2012-13 and 2014-15. The Revenue has raised the following common grounds of appeal except for variation in figures:

> 1) The orders of the CIT(A) are opposed to the facts and circumstances of the case.
>
> 2) Whether on the facts and in the circumstances of the case the Hon'ble ITAT is right in allowing claim of exemption u/s. 10(30) of the Income Tax Act for holding that the provisions of section 10(30) of the I.T. Act is not applicable to the assessee's case though there is no Central government Notification for Special Purpose Tea Fund Scheme?
>
> 3) The CIT(A) failed to consider the decision of Apex Court in M/s. Liberty India vs. Commr. of Income Tax, Karnal wherein it was held "DEPB/Duty Drawback are incentives which flow from the Schemes framed by Central Government or from Section 75 of the Customs Act, 1962, hence, incentives profits are not profits derived from the eligible business u/s. 80IB. They belong to the category of ancillary profits of such Undertakings which squarely applies to the instant case.
>
> 4) The CIT(A) failed to consider the fact that the Assessing Officer has made the disallowance of loss from floral extraction, operation expenditure amounting to Rs.41,77,944/- relying on the decision of the Hon'ble Madras High Court in the case of CIT vs. Soundarya Nursery and Uttarakhand High Court in CIT vs. Green Gold Tree Farmers P. Ltd.

4. The first common ground, Ground No.1 is general in nature and does not require adjudication.

5. The next common ground is with regard to allowability of claim of deduction u/s. 10(30) of the I.T. Act.

6. We shall consider the facts as narrated in ITA No.23/Coch/2020. The facts of the case are that the assessee claimed deduction of Rs.1,26,81,279/- for the assessment year 2012-13 u/s. 10(3) of the I.T. Act in respect of subsidy received from Tea Board under Special Purpose Tea Fund Scheme. Since the Special Purpose Tea Fund Scheme was yet to be notified by the Central Government, the Assessing Officer held that the assessee is not eligible for exemption u/s. 10(30) of the I.T. Act.

7. On appeal, the CIT(A) allowed the above issue by placing reliance on the order of the ITAT, Cochin Bench in assessee‘s own case in ITA Nos.77,78 & 91/Coch/2017 dated 14/01/2018 for the assessment years 2010-11 to 2012-13 wherein the said issue was decided in favour of the assessee by holding as follows:

> *"7.5 We do not see any infirmity in the findings of the CIT(A) to take a contrary view. Even if the provisions of Section 10(30) of the I.T. Act is not applicable, since the subsidy is given for replantation, replacement planting and rejuvenation planting of the tea business, it can be only termed as a capital receipt and not as a revenue receipt. For the aforesaid reasons, we confirm the order of the CIT(A) and reject the ground no. 1 raised by the Revenue in ITA No.131/Coch/2017."*

8. Against this, the Revenue is in appeal before the Tribunal for both the assessment years. The Ld. DR relied on the grounds raised.

9. The Ld. AR relied on the order of the CIT(A).

10. We have heard the rival submissions and perused the material on record. In our opinion, the CIT(A) has not committed any error in allowing the appeals of the assessee by following the earlier order of the Tribunal in assessee's own case in ITA Nos.77,78 & 91/Coch/2017 dated 14/01/2018 for the assessment years 2010-11 to 2012-13. Being so, we do not find any infirmity in the order of the CIT(A) and the same is confirmed. Thus, this ground of appeals of the Revenue is dismissed.

11. The next common ground is with regard to treating of income amounting to Rs.76,78,000/- earned from sale of import licenses as central income by the Assessing Officer.

12. The facts of the issue are that the Assessing Officer found that the assessee had earned an amount of Rs.76.78 lakhs by way of sale of import license, which was included in the other operating income of Rs.363.36 lakhs. The Assessing Officer held that this income was an incentive and not an income derived out of export of tea. The Assessing Officer held that merely because VKUY/DEPB is a scheme for promoting tea export, it cannot be said that sale of such VKUY/DEPB can be occurred out of such export of tea. According to the Assessing Officer, provisions of section 28(iiia) are applicable to sale of import license.

Therefore, the Assessing Officer added 100% of the sale of import license to central income tax.

13. Before the CIT(A), the assessee contended that the DEPB/VKUY licenses were obtained by the company due to a scheme for promoting tea exports and hence, is an integral part of the plantation operations of the company. It was submitted that the assessee-company undertakes export taking into consideration the import license benefits. Therefore, the benefits are clearly part of the tea income. It was submitted that the assessee had not claimed the income as exempt incopme (agricultural income) but as a part of the combined operations and hence, the assessee was correct in treating the said income as tea income as per Rule 8. The CIT(A) decided the issue in favour of the assessee by following the order of the ITAT, Cochin Bench in assessee's own case in earlier years in ITA Nos.131, 163 & 164/Coch/2017 wherein it was held as follows:

> *"....The import license were obtained by the assessee company on account of a scheme for promoting tea exports. The income from sale of import licenses received on account of export of tea is an integral part of plantation operation of the company. The assessee company undertakes exports taking into consideration the import license benefits. Therefore, the import licenses benefits are clearly part of the tea income. The assessee company has not claimed the income as exempt income (agricultural income) but as a part of the combined operation and hence the CIT(A) was correct in treating the said income as tea income as per Rule 8."*

14. Against this, the Revenue is in appeal before the Tribunal for both the assessment years. The Ld. DR relied on the grounds raised.

15. The Ld. AR relied on the order of the CIT(A).

16. We have heard the rival submissions and perused the material on record. In our opinion, the CIT(A) has not committed any error in allowing the appeals of the assessee by following the earlier order of the Tribunal in assessee's own case in ITA Nos.131, 163 & 164/Coch/2017 dated for the assessment years . Being so, we do not find any infirmity in the order of the CIT(A) and the same is confirmed. Thus, this ground of appeals of the Revenue is dismissed.

17 The next common Ground is with regard to deletion of addition of Rs.13,92,648/- being share of loss from floral extraction operation expenditure claimed as central income.

18. The facts of the issue are that the Assessing Officer disallowed the share of loss from floral extraction operation expenditure claimed as deduction from central income stating that the entire income from operations is to be regarded as agricultural income. The Assessing Officer held that the loss incurred by the assessee from floral extraction operation cannot be equated with its operation of earning tea income which is covered by Rule 8D of Income Tax Rules, 1962. According to the Assessing Officer, the assessee had deducted loss of Rs.41,77,944/- from the business income as share of floral oil extraction loss. Since this claim of loss has not arisen out of the assessee's business operations, but has arisen out of assessee's agriculture business of growing rose and extraction

of rose oil, the loss so claimed against business income was disallowed. Thus, the loss of Rs.41,77,944/- claimed as deduction against income chargeable under the head business and profession was disallowed.

19. Before the CIT(A), the assessee submitted that the floral extraction process includes various processes which comprise of plucking of flowers to the final stages of extraction process. Hence, based on technical estimation the management had arrived at the proportion of process to be regarded as direct agricultural as 75% and the quantum of extraction process was to be regarded as 25%. After considering the submission of the assessee, the CIT(A) deleted the disallowance of Rs.13,92,648/-.

20. Against this, the Revenue is in appeal before us. The Ld. DR relied on the grounds raised.

21. The Ld. AR submitted that the floral extraction process includes floral extraction process includes various processes which comprise of plucking of flowers to the final stages of extraction process. Hence, based on technical estimation the management had arrived at the proportion of process to be regarded as direct agricultural as 75% and the quantum of extraction process was to be regarded as 25%.

22. We have heard the rival submissions and perused the record. We find that the order of the CIT(A) is very cryptic. The Ld. CIT(A) being a quasi-judicial authority, is required to pass a speaking order and give reasons for allowing the appeal of the assessee in terms of section 250(6) of the I.T. Act. Since the CIT(A) has not given proper reasons for deciding the issue in favour of the assessee, it is appropriate to remit the issue in dispute to the file of the CIT(A) to pass a speaking order. Thus, this ground of appeals of the Revenue is remitted to the file of the CIT(A) for passing a speaking order on this issue. The appeals of the Revenue in ITA Nos. 23 & 24/Coch/2020 are partly allowed for statistical purposes.

<u>ITA Nos. 25/Coch/2020 : Assessee's Appeal: A.Y. 2013-14</u>
<u>ITA Nos. 26/Coch/2020 : Assessee's Appeal: A.Y. 2014-15</u>

23. The assessee has raised the following common ground of appeals except for variation in figures:

> The Ld. CIT(A) erred in not allowing Rs.97.16 lakhs as income from Tea Operations. The CIT(A) ought to have held that such income being in the nature of Insurance claim, discount from suppliers, cattle fee recoveries, electricity work income, old balances written off, estate cost recoveries etc. derived from operations of cultivation of tea is assessable as per Rule 8 of the Income Tax Rules.

24. The facts of the issue as narrated in ITA No.25/Coch/2020 are that during assessment year 2013-14, the assessee had credited Rs.235.71 lakhs as other non-operating income (net of excise duty of Rs.8.57 lakhs) during the current year. The Assessing Officer treated the sum of Rs.264.25 lakhs as non operating income

Out of this, the assessee has taken benefit of Rule 8 and claimed as exempt income. The Assessing Officer observed that out of Rs.264.25 lakhs,, a sum of Rs.121.52 lakhs was non operating exempted income. Therefore, he brought into tax Rs.142.73 lakhs .

25. Before the CIT(A), the assessee contended that this issue was covered in favour of the assessee by the decision of the Tribunal in assessee's own case in ITA Nos. 131, 163 & 164/Coch/2017 dated 04/01/2018 for the assessment years 2018-11 to 2012-13 in respect of certain items of the miscellaneous income:

i) Service charge for system support to Tata Global Beverages Ltd. – 9.08 lakhs.

ii) Income from tea and soil analysis – 1.12 lakhs
iii) Scrap Sale – 33.88 lakhs
iv) Miscellaneous income from electricity – 1.49 lakhs
v) Other miscellaneous income – No such classification found.

For the assessment year 2013-14, since the amounts mentioned above were covered by the decision of the Tribunal (supra), the CIT(A) gave relief of Rs.45.57 lakhs out of the addition of Rs.142.73 lakhs made by the AO. The balance amount of Rs.97.16 lakhs was confirmed.

26. Similarly for assessment year 2014-15, the assessee treated the sum of Rs.206.74 laksh as exempted income. However, the Assessing Officer treated the

sum of Rs.38.42 lakhs as other exempted income under Rule 8 and balance amount of Rs. 168.32 lakhs was treated as taxable income.

27. On appeal, the CIT(A) gave relief to the tune of Rs.58.67 lakhs out of the addition of Rs.168.32 lakhs made by the AO. The balance amount of Rs.109.65 lakhs was confirmed.

28. Against this, the assessee is in appeal before us. The Ld. AR submitted that the company is engaged in various kinds of operational as well as non operational activities, including agricultural and non agricultural and income brought under Rule 8 are incidental and specifically pertains to tea plantation and tea income only.

29. The Ld. DR relied on the order of the lower authorities.

30. We have heard the rival submissions and perused the material on record. According to the Ld. AR, the following income is to be allowed as agricultural income:

Sl. No.	Nature of Income	AY 2013-14	AY 2014-15	Remarks
1.	Cattle fee recoveries	14.84	15.17	Covered by ITAT order for AY 2010-11, 2011-12 and 2012-13 (*Rectification filed and rectified for AY 2014-15 in the order giving effect to CIT(A) order dated 18.12.2019
2..	Advance received for electricity work transferred to income	18.42	-	Relating to Tea Operations allowed by ITAT. Electricity Income allowed as deduction under section 80IA by Hon. High Court of Kerala
3.	Old balance written off	11.99	-	Relating to Tea Operations allowed by ITAT. Electricity Income allowed as deduction under section 80IA by Hon. High Court of Kerala
4.	Recovery of providing systems service to TGBL	-	10.08	Covered by ITAT order for AY 2010-11, 2011-12 and 2012-13
5.	Sale of firewood Grown in the Estate	-	39.32	From sale of firewood grown in the plantation for use in Tea Manufacturing factories – directly relating to tea operations. Expenditure for firewood planting is treated as tea operations expenses.
6.	Insurance Claim	7.84	5.74	Relating to loss arising to assets in Tea Operations allowed by Assessing Officer for AY 2010-11
7	Sale of Old Tyres	0.81	0.40	Relating to vehicles used for Tea Operations, allowed by Assessing Officer for AY 2010-11
8.	Vehicle mileage recoveries	0.75	0.86	Relating to vehicles used for Tea operations, allowed by Assessing Officer for AY 2010-11
9.	Recovery from transporters	0.21	0.17	Directly relating to Tea operations, allowed by AO for AY 2011-12
10.	Cash discount from suppliers	2.19	0.71	Relating to supplies to Tea operations, allowed by AO for AY 2010-11
11.	Penalty for delayed supply of materials	1.37	3.25	Relating to supplies to Tea Operations, allowed by AO for AY 2010-11
12.	Recovery for use of guest house	1.07	2.26	Income relating to Plantation Guest House the expenses of which is borne by Tea Operations.
13	Cost of ID cards issued recovered	0.67	-	Recovery of employee related cost directly relating to tea operation.
14.	Recovery of software installation charges	5.75	-	One time income from installation of in-house developed plantation software at the plantations in Munnar of Tata Consumers Products Limited – directly relating to tea operation.
15.	Tea Board grant for organic compost manure	5.00	-	Subsidy received from Tea Board of India for Tea Operations.
16.	Refund of Insurance premium	0.26	-	Refund out of insurance premium mainly paid for Tea Operations.
17.	Refund of excess compensation under workmen compensation	0.31	-	Refund mainly out of compensation paid relating for Tea operations.

18.	Profit on sale of goods	6.41	-	Relating to sale of miscellaneous goods in Tea Operations.
19.	Recovery of estate road maintenance charges	3.55	3.35	Recovery from transporters for use/damage to plantation roads. Maintenance expense of plantation roads are treated as expense of tea operations
20.	Fringe benefits to estate labours recovered	7.06	7.29	Recovery of employee related cost – direct tea operations.
21.	Grant received for providing noon meal to Estate school children	8.66	3.43	Grant receipts against expenditure relating to noon meal assistance taken as tea operations.
22.	Profit of sale of Fixed Assets	-	7.64*	Income from Sale of Assets already considered in the return of income along with Net loss on sale of assets added to income (*Rectification filed and rectified in the order giving effect to CIT(A) order dated 18.12.2019)
23.	Income for trekking activities	-	2.28	Amount recovered from tourists for trekking in plantation areas
24.	Cess on allowance Tea	-	0.18	Income from Assets directly related to Tea operations.
25.	Adjustment of cost difference in stores	-	0.67	Mainly relating stores items of plantation stores.
26.	Recovery of damage to Company properties	-	1.82	Mainly for damage to plantation properties
27.	Recovery of charges relating to scout centres	-	0.03	Sundry receipts
28.	Income from film shooting	-	0.20	Recovery of shooting in the plantation areas
29.	Collection from sundry market	-	0.54	Proceeds from sale of sundry tea products.
30.	Income from Tea Museum	-	1.09	Income received from Tea Museum operated by the Company
31.	Orthodox Tea Subsidy	-	3.17	Income relating to earlier years from Tea Board of India for manufacture of Orthodox type of Teas.
	Total	**97.16**	**109.65**	

30.1 However, we find that the above details pointed out by the Ld. AR before us were not at all filed before the CIT(A). Had it been filed before the CIT(A), then the decision of the CIT(A) would have been different. Hence, it is appropriate to remit the issue in dispute to the file of the CIT(A) to consider the above details furnished by the assessee and decide the issue in accordance with law. With this observation, we remit this issue to the file of the CIT(A) for fresh consideration. This ground of appeals of the assessee is partly allowed for statistical purposes.

31. In the result, the appeals of the Revenue and the assessee are partly allowed for statistical purposes.

Order pronounced in the open court on 12th March, 2020.

sd/-	sd/-
(GEORGE GEORGE K.)	(CHANDRA POOJARI)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Place: Kochi
Dated: 12th March, 2020
GJ
Copy to:
1. Kannan Devan Hills Plantations Co. Pvt. Ltd., MGP/IX/2226/KDHP House, Munnar, Devikulam, Idukki-685 612.
2.The Assistant Commissioner of Income-tax, Corporate Circle-1(2), Kochi.
3.The Comissioner of Income-tax(Appeals)-II, Kochi.
4. The Pr. Commissioner of Income-tax, Kochi.
4. D.R., I.T.A.T., Cochin Bench, Cochin.
5. Guard File.

By Order

(ASSISTANT REGISTRAR)
I.T.A.T., Cochin